IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.224 OF 2005

M/s Procyon Offshore Services Pvt.Ltd. ... Petitioners

v/s

M/s Abhay Ocean India Ltd. ... Respondents

Mr Anil K. Lulia for Petitioners.

Mr Kedar Wagle for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 8TH AUGUST 2005.

P.C. :-

1. The facts material for deciding this petition are that admittedly there was an arbitration clause between the parties. Arbitration clause provided for appointment of three Arbitrators, one by the petitioners, one by the respondents and third by the two Arbitrators. The respondents therefore accordingly on the disputes arising, appointed their nominee on the Arbitral Tribunal and communicated the appointment to the petitioners by communication dated 19th August 2004. The petitioners replied to the said communication by their letter dated 3rd September 2004. The petitioners, instead of appointing their nominee on the Arbitral Tribunal, stated that instead of Arbitral Tribunal consisting of three Arbitrators, let there be Sole Arbitrator and the petitioners consented to the nominee of the respondents being the Sole Arbitrator. Therefore, the Sole Arbitrator issued notice to the petitioners to appear before him. The petitioners by communication dated 7th October 2004 informed the Arbitrator that they are withdrawing their consent to his appointment as Arbitrator. The first meeting of the Arbitral Tribunal was held on 20th October 2004. In that meeting, the learned Arbitrator noted the

communication received and observed that decision thereon would be taken in the next meeting. The next meeting of the Sole Arbitrator was held on 3rd November 2004. The learned Arbitrator has observed that the petitioners have not raised any objection to his appointment but have merely said that they are withdrawing their consent to his appointment as Arbitrator, however, no reason has been given for withdrawing the consent nor any objection is raised to his continuance as Arbitrator. It was also noted that an objection contemplated by section 12 of the Arbitration and Conciliation Act 1996 has also not been raised. Therefore, the objection was overruled. The petitioners did not thereafter appear in the arbitral proceedings, as a result the award came to be made by the learned Arbitrator on the basis of the material produced by the respondents. It is this award which is challenged in the present petition.

2. I have heard learned counsel for both the sides. As per the arbitration clause existing between the parties, the Arbitral Tribunal was to consist of three Arbitrators. The effect of the communication dated 3rd September 2004 from the petitioners was that the arbitration clause between the parties was modified and now, the arbitration clause provided for Sole Arbitrator. The petitioners also consented to the

appointment of the Sole Arbitrator. Even if it is assumed that the consent given by the petitioners for appointment of Arbitrator could be withdrawn, the consent could not have been withdrawn without any valid reason. Perusal of the objection raised by the petitioners shows that there is no reason whatsoever disclosed by the petitioners withdrawing the consent and therefore, in my opinion, the petitioners were not justified in withdrawing the consent without disclosing any reason. It is to be seen that the perusal of the provisions of Arbitration and Conciliation Act 1996 shows that once an Arbitrator is appointed by consent of parties, an objection to the appointment of the Arbitrator can be taken by following the procedure laid down by sections 12 and 13 of the said Act. Perusal of provisions of section 14 of the said Act shows that mandate of the Arbitrator gets terminated for inability of the Arbitrator to function as such or because of the withdrawal from the arbitration. Perusal of section 15 shows that termination of the mandate can also be brought about by an agreement between the parties. There is no provision in the Act which permits a party who has given consent to the appointment of a person as Arbitrator to withdrawn that consent so as to bring about termination of the mandate of the arbitration. The petitioners thus, in my opinion, were not justified in withdrawing the consent which was given by the

petitioners for appointment of the Sole Arbitrator. The petitioners have admitted that they have not participated in the arbitration proceedings, there is no valid reason why they did not participate in the proceedings and therefore, the award cannot be interfered with. In the result therefore, petition is rejected.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.